IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

WP(C).No. 805 of 2007(U)

EA 2287/06 IN EP 102/06 IN OS 556/01 OF SUB COURT, THRISSUR

PETITIONER:

THILAKAN,
PANICKASSERY EDAKKAD, NATTIKA VILLAGE,
CHAVAKKAD TALUK.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:

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1. PREMALATHA, W/O. LATE GOPI,
PAPPACHAN VEEDU, VADANAPPILLY VILLAGE,
CHAVAKKAD TALUK.

2. KAVYA, D/O. LATE GOPI,
-DO- -DO- (MINOR)

3. KIRAN, S/O. LATE GOPI,
-DO- -DO- (MINOR).
RESPONDENTS 2 AND 3 REP. BY THEIR MOTHER AND
NATURAL GUARDIAN PREMALATHA, THE 1ST RESPONDENT
HEREIN, SINCE THEIR FATHER GOPI IS NO MORE.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.805 OF 2007

Dated 9th January 2007

J U D G M E N T

Petitioner filed O.S.1193/06 before Sub court, Thrissur seeking a decree for declaration that respondents 1 to 4 are not entitled to take delivery of the property pursuant to the sale deed executed as per sale deed No.316/95 of S.R.O, Thriprayar and that the decree and judgment in O.S.66/97 and 556/2001 on the file of Munsiff court, Chavakkad are not valid and binding on him. Application under Order XXXIX Rule 1 of Code of Civil Procedure, seeking an order of temporary injunction restraining respondents from executing the decree in O.S.556/01 by dispossessing petitioner was also sought. That application was dismissed after hearing both parties. When the decree holders in O.S.556/01 filed E.P.102/06 for taking delivery of the property, petitioner filed E.A.2287/06 claiming that the decree is not binding on him and he cannot be dispossessed in execution of the decree. Executing court dismissed that application

also. This petition is filed under Article 227 of Constitution of India seeking a writ or direction to set aside the order passed by Sub court dismissing the application for injunction as well as the order of the executing court dismissing E.A.2287/06. Petitioner has also sought a writ of mandamus or direction to the court to issue copies of the orders applied for by petitioner so that he could challenge the orders before appropriate forum. Petitioner contended that even though he applied for carbon copy of the orders, copies of orders were not granted. When contacted, it was informed by the Sub court that carbon copy will be issued to the petitioner on 8/1/2007. When the case was taken up today, it was represented that copy of the order was not issued. When contacted, it was informed that copy could not be made ready yesterday and it will be issued today without fail. In view of the said intimation, I do not find that any direction to issue carbon copy of the orders applied for is necessary as they will be issued to the petitioner today.

2. In exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India, an order passed in an application under Order XXXIX Rule 1 of Code of Civil Procedure cannot be set

aside. The remedy of the petitioner is to challenge that order in appeal as provided under Order XLIII Rule 1 of the Code. Similar is the case with the order in E.A.2287/06. Petitioner has to challenge that order before the appropriate court and it cannot be set aside in these proceedings. There is force in the submission of learned counsel appearing for petitioner that before petitioner could challenge the order if he is to be dispossessed, it would cause much hardship and prejudice to petitioner. In such circumstances, Sub court, Thrissur is directed to keep the order for delivery passed in E.P.102/06 in abeyance for one week from today, if delivery is not so far taken.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.